eral debt of the conquered state existing previously to the war. The author, it is true, regards this general debt as "impliedly" attached to the assets. But it is hard to see why an obligation to pay money is in its nature any more attached to the assets than an obligation to permit X to trade, or to buy supplies from Y, and yet the author concedes that these would not be so attached. In private law, a debt is clearly not in general attached to the debtor's assets.

On the whole, it would seem a more satisfactory rule that the conquering state, since it takes possession of the assets of the vanquished state, should assume all its obligations toward private persons unless peculiar reasons for their repudiation exist in special cases. Such reasons would exist, as the author points out, with regard to the debt incurred by the conquered state in the war resulting in conquest, and with regard to certain liabilities peculiarly personal to the conquered state, such as a contract to buy army uniforms during a period of years, and other executory contracts which from their nature depend on the continued existence of the conquered state, and possibly a tort liability. To these exceptions might be added obligations likely to disturb the relations of the conqueror with other nations.

GIFT OVER OF REALTY UNDISPOSED OF AT DEATH OF FIRST TAKER. — Chancellor Kent remarked in 1813 that "a valid executory devise of real or personal estate cannot be defeated at the will or pleasure of the first taker," — in other words, that an executory devise which may be defeated by the taker of the prior estate is invalid; and thereafter the law of real property in the United States was formulated with due regard to this doctrine. The facts of the case calling forth the proposition were these: A devise of realty was made to A and his heirs, but if A died without issue the "said property he should die possessed of" was to go over to X. Obviously by the clause quoted the power to dispose of the property in fee by deed and thus defeat the gift over was impliedly given to A, and the Chancellor accordingly declared that the executory devise to X was void. *Jackson* v. *Bull*, 10 John. (N. Y.) 19. Modern criticism has shown that the holding was not sustainable on its authorities, the principal case cited in support being a most ill-founded Massachusetts decision. *Ide* v. *Ide*, 5 Mass. 499; see GRAY, RESTR. ALIEN. § 68. On theoretical grounds, also, *Jackson* v. *Bull* has been subjected to severe adverse comment, an illustration of which appears in a recent article. *Effect of Power to Alienate on Executory Devise*, by B. M. Thompson, 1 Mich. L. Rev. 427 (Mar., 1903).

This article denies Kent's assertion that an executory devise is invalid if the prior taker has the power to defeat it, and adopts the following test: Is the contingency on which the executory devise is to take effect the "refusal or failure to exercise a power incident to the prior estate devised"? If so, the condition is said to be void and to render the executory devise ineffective. But the estate given to A under the limitation "to A and his heirs, but if A die without issue then over," is, the author says, a conditional fee, of which the power of alienation in fee is not an incident. *Cf.* 32 Am. L. Reg. N. S. 1045. In *Jackson* v. *Bull*, to be sure, such power of disposal was given to the tenant of the conditional fee, but this did not enlarge the conditional fee any more than the power of disposal given to a life-tenant enlarges the life-estate. Hence, says Mr. Thompson, when the gift over was made to comprise such of the property devised as A should die possessed of and was thus in effect limited on the failure to alienate, it was not limited on the failure to exercise a power incident to the prior estate devised, and therefore should have been held valid.

The author's reasoning is technical. The result reached thereby would differ from that of Chancellor Kent at most only in those cases where a conditional fee could be established. Suppose that an absolute fee were given to A with a limitation over to X of the property undisposed of at A's death. According to the author's view the executory devise to X would be bad, since it depends upon the non-exercise of the power of alienation, a power incident to the abso-

lute fee granted. Thus in a large class of cases where the influence of Chancellor Kent's decision is greatly to be deplored the author's view would furnish no relief. Yet in this class of cases no reason exists in the nature of things why the executory devise should not be upheld. The reason urged against an executory devise of undisposed of personalty, namely, that the limitation is too indefinite since it is generally impossible to determine the exact property so left, does not apply to devises of realty, which are here under consideration. Moreover, as was pointed out by counsel in early cases in England, if the limitation were to A for life, with power of appointment by deed or will, and in default of appointment over to X, the devise to X would be valid. See *Ross* v. *Ross*, 1 Jac. & W. 154, 156. This admittedly valid limitation, however, produces a result identical with that where the fee is given to A with an executory devise over to X of property undisposed of. If, then, there are any valid objections to the latter limitation, they cannot rest on grounds of policy and substantial justice. But the technical objection raised by Mr. Thompson seems equally unavailing. His basic proposition, as his authorities indicate, is but a special expression of the supposed objection of "repugnancy" or "incongruity," an objection which declares that no estate can be granted deprived of its ordinary incidents, but which has been characterized by one judge as "a notion which savors of metaphysical refinement rather than anything substantial." Truro, L. C., in *Watkins* v. *Williams*, 3 Macn. & G. 622, 629. Moreover, the recognized possibility of having a conditional fee, which *ex vi termini* is a fee with some of its ordinary incidents subtracted, is proof positive that no such general rule exists. An executory devise of realty undisposed of at the death of the taker of an absolute fee should accordingly be sustained, and the author's conclusion, in so far as it denies the validity of such a devise, seems incorrect.

Every effort should be made to sustain executory devises of realty undisposed of at the death of the first taker and thus effectuate the testator's intention. It is submitted that they should be upheld except in those cases where to allow them would impose an illegal restraint on alienation. When a tenant in fee is given full power of alienation both by deed and by will, with a gift over only on his failure to exercise that power, certainly no restraint on alienation exists and the executory devise should be upheld. GRAY, RESTR. ALIEN. §§ 57–74 g. In *Jackson* v. *Bull*, it is to be noted, alienation by will is restrained if A dies without issue. Possibly such a conditional restraint might be held to render the gift over inoperative. The actual decision in *Jackson* v. *Bull*, therefore, may be sustainable. See GRAY, RESTR. ALIEN. § 56 c. Chancellor Kent's *ratio decidendi* in that case, however, as Mr. Thompson well points out, is erroneous.

STATUS OF CORPORATIONS ON DISSOLUTION OF CHARTERING GOVERNMENT. — The change of sovereignty in South Africa has given rise to an interesting question concerning the present status of corporations chartered by the old Transvaal government. Although the point is one that rarely arises owing to the fact that the contingency on which it depends is now of infrequent occurrence, it has grown with the wide extension of corporate interests to be one of no small importance. Direct authority on it is very meager, and hence a discussion of it in a late issue of an English magazine deserves remark. *The International Status of Modern Companies*, by D. F. Pennant, 28 L. Mag. and Rev. 161 (Feb., 1903). The author draws a distinction between municipal and private corporations, and concludes that the former, being mere subdivisions of the central government, cannot survive it, but that the latter are sufficiently independent of it to be unaffected by its dissolution. It is at once obvious that if all corporate charters were *ipso facto* annulled when the government which granted them ceases to exist, great confusion would result in business circles. In the interim between the death of the old and the proper organization of the